

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds claimant has not proven by a preponderance of the credible evidence that he suffered an accidental injury or that his alleged accidental injury arose out of and in the course of his employment with respondent and, as such, the Order denying medical treatment by Judge Palmer, should be affirmed.

Claimant alleges accidental injury on either May 20, May 25, or May 28, 1996, depending upon which report is considered. Claimant's Form E-1 alleged May 28, 1996, while the emergency room notes indicate May 25, 1996, for the appropriate date. Claimant's history to Dr. Michael J. Poppa indicated a May 20, 1996, injury.

The history provided by claimant indicates he waded into deep flood water to rescue a woman visiting his employer's place of business and was forced to work the rest of the day in wet clothing. Claimant contends the rash that developed on his extremities was a result of this immersion in the flood water and the continued irritation to his skin from the wet clothing.

The medical records placed into evidence indicate that claimant has suffered an acute rash to the same areas of the body since April 1989. Medical records show claimant's acute contact dermatitis has been a problem for nearly 10 years with the symptoms being the same as those displayed by claimant subsequent to the immersion in the flood water.

In proceedings under the Workers Compensation Act the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). See also Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

It is the function of the trier of facts to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. See Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

Claimant has failed to convince the Appeals Board that his ongoing acute dermatitis condition stems from the alleged flood water activities of either May 20, May 25, or May 28, 1996. The medical records indicate claimant's condition and his symptoms have not changed over the preceding 10 years and the symptoms displayed by claimant subsequent to the alleged injury are the same as those symptoms displayed over a 10 year history. The Appeals Board finds that the Order denying medical treatment issued by Judge Palmer should be, and is hereby, affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated March 14, 1997, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1997.

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Jeffrey A. Chanay, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director